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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/967,068	09/27/2001	Ann Rhee	266/202	7381

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EXAMINER

WU, QING YUAN

ART UNIT	PAPER NUMBER
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2194

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/06/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/967,068

Applicant(s)

RHEE ET AL.

Examiner

Qing-Yuan Wu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-9,11-17,19-25,27,29 and 31-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11,3-9,11-17,19-25,27, 29 and 31-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

WILLIAM THOMSON
SUPERVISORY PATENT EXAMINER

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1, 3-9, 11-17, 19-25, 27, 29 and 31-36 are pending in the application.

Claim Objections

2. Claim 31 objected to because of the following informalities: "claim 17" should read -- claim 1-- as previously recited in amendment filed 5/19/06. It will be treated as such for the remainder of this office action. Appropriate correction is required.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1, 3-7, 9-12, 25, 27, 31 and 33 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

5. As to claim 1, the current focus of the Patent Office in regard to statutory inventions under 35 U.S.C. § 101 for method claims and claims that recite a judicial exception (software) is that the claimed invention recite a practical application. Practical application can be provided by a physical transformation or a useful, concrete and tangible result. No physical transformation is recited and additionally, the claimed subject matter lacks a practical application of a judicial exception since it fails to produce a useful, concrete and tangible result. Specifically, the

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claimed subject matter does not produce a tangible result because the claimed subject matter fails to produce a result that is limited to having real world value rather than a result that may be interpreted to be abstract in nature as, for example, a thought, a computation, or manipulated data. More specifically, the claimed subject matter provides for allowing a second resource consumer of a second group to continue an already-running activity on the computer system. This produced result remains in the abstract and, thus, fails to achieve the required status of having real world value. Claim 9 is rejected for similar reason. See MPEP 2107.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 3, 5-7, 11, 25, 27, 31 and 33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. The following terms lacks antecedent basis:

- i. The one or more criteria- claim 5.
- ii. The prescribed value- claims 25, 27, 31 and 33.

b. The following claim language is indefinite:

- i. As per claim 3, it is uncertain whether “a first/second group of resource consumer” refers to “a first group” in claim 1, line 3 (i.e. if they are the same then “said” or “the” should be used and “the first group” must be used throughout all

the claims). For examination purposes, they are treated as the same. Claims 5, 6 and 11 are rejected for similar reason.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1, 3, 5-6, 8, 9, 11, 13-14, 16, 25, 27 and 31-34 are rejected under 35 U.S.C. 102(e) as being anticipated by Sitaraman et al (hereafter Sitaraman) (U.S. Patent 6,430,619).

10. Sitaraman was cited in the last office action.

11. As to claim 1, Sitaraman teaches a method for quiescing resource consumer activity in a computer system, comprising:

preventing a first resource consumer of a first group from starting a new activity on the computer system based upon a resource plan, in which the resource plan comprises a limit on a maximum number of active sessions for the first group [CorpA, network max/abs max sessions, Figs. 3-4; groups, col. 5, lines 54-65; wholesale user, col. 3, lines 21-26; 66, Fig. 6; reject access, col. 6, lines 54-61]; and

allowing a second resource consumer to continue already-running activity on the computer system [CorpB, network max/abs max sessions, Figs. 3-4; col. 7, lines 4-9].

12. As to claim 3, this claim is rejected for the same reason as claim 1 above.

13. As to claim 5, Sitaraman teaches a method for quiescing resource consumer activity in a computer system, the computer system having a first configurable value associated with a first resource consumer group [CorpA, network max/abs max sessions, Figs. 3-4], the first resource consumer group comprising one or more resource consumers [abstract], the first configurable value representing a first number of active sessions that the first resource consumer group is allowed to have running on the computer system, in which the one or more criteria comprise:

configuring the first configurable value to a quiescence value, the quiescence value being adapted to limit the number of newly active sessions for the first resource consumer group to zero (i.e. the situation where the CorpA user exceeded the maximum sessions limit; *In addition, applicant is directed to MPEP 2111.04 in regards to the patentable weight given to the intended result of the claim*), wherein all currently active sessions are allowed to continue, but no new sessions are allowed to become active [Figs. 3-4; col. 5, lines 21-26; 66, Fig. 6; abstract].

14. As to claim 6, Sitaraman teaches wherein the computer system further comprises a second configurable value associated with a second resource consumer group [CorpB, Network max/abs max sessions, Figs. 3-4], the second resource consumer group comprising one or more

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resource consumers [abstract], the second configurable value being adapted to define a second number of active sessions the second resource consumer group is allowed to have running on the computer system, further comprising:

configuring the second configurable value to a value adapted to allow one or more active session from the second resource consumer group to run while the first configurable value is set to the quiescence value (i.e. the situation where the CorpB user did not exceed the maximum sessions limit) [Figs. 3-4; 76, Fig. 6].

15. As to claim 25, Sitaraman teaches wherein the prescribed value is zero [col. 6, lines 9-10] (Examiner's interpretation of "prescribed value" as any value in relation to any of the resource consumers since applicant did not provide antecedent basis for this limitation, neither preclude nor define this limitation and fail to provide support or clarification for this limitation in the specification).

16. As to claim 31, Sitaraman teaches wherein the number of active session is limited not to exceed the prescribed value [col. 5, lines 23-26].

17. As to claims 9, 11, 27 and 33 these claims are rejected for the same reason as claims 1, 3, 25 and 31 above.

18. As to claim 8, this claim is rejected for the same reason as claims 1 and 5-6 above. In addition, Sitaraman teaches replacing the first resource plan with a second resource plan [col. 5,

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lines 26-32 and 62-65; network max/abs max sessions], the second resource plan comprising a first resource consumer group and a second resource consumer group [CorpA, CorpB, Figs. 3-4].

19. As to claim 32, this claim is rejected for the same reason as claim 31 above.

20. As to claims 13-14, these claims are rejected for the same reason as claims 5-6 above.

21. As to claims 16 and 34, these claims are rejected for the same reason as claims 8 and 31 above.

Claim Rejections - 35 USC § 103

22. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

23. Claims 4, 7, 12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sitaraman as applied to claims 1 and 9 above .

24. As to claim 4, Sitaraman does not specifically teach wherein the prevented activity is queued. However, it is well known in the art to queue un-serviced requests.

25. As to claims 7, 12 and 15, these claims are rejected for the same reason as claim 4 above.

26. Claims 17, 19, 20-24, 29 and 35-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sitaraman as applied to claims 1 and 9 above, in view of Jones et al (hereafter Jones) (U.S. Patent 6,003,061).

27. Jones was cited in the last office action.

28. As to claim 17, this claim is rejected for the same reason as claims 1 and 5-6 above. Sitaraman does not specifically teach a scheduler for allocating the resource. However, Sitaraman disclosed subscribing for a level of VPN coverage [col. 5, lines 18-21] and permitting a user to raise a VPN session [col. 7, lines 6-7]. However, Jones teaches a scheduler for allocating the resource among resource consumers [Jones, col. 6, lines 8-17].

29. It would have been obvious to one of an ordinary skill in the art at the time the invention was made, to have modified the teaching of Sitaraman with the teaching of Jones, because the teaching of Jones enhances the teaching of Sitaraman by providing a resource managing or planning functionality for allocating disparate resources [Jones, processor time, hardware, software, col. 6, lines 14-17] among requesting consumers.

30. As to claim 19, this claim is rejected for the same reason as claim 11 above.

31. As to claim 20, this claim is rejected for the same reason as claim 4 above.

32. As to claim 29, Sitaraman as modified does not specifically teach wherein the prescribed value (as recited in independent claim 17) is zero. However, Sitaraman disclosed a max/abs max session value [Figs. 3-4; col. 5, lines 18-67]. It would have been obvious to one of an ordinary skill in the art at the time the invention was made, to have recognized that if the value of max session is set to zero for a particular group (i.e. CorpA), no consumers of that group will be permitted to raise a connection since any request would exceed the maximum number of VPN sessions.

33. As to claim 35, this claim is rejected for the same reason as claim 31 above.

34. As to claim 21, this claim is rejected for the same reason as claims 5 and 17 above.

35. As to claim 22, this claim is rejected for the same reason as claim 6 above.

36. As to claim 23, this claim is rejected for the same reason as claim 4 above.

37. As to claim 24, this claim is rejected for the same reason as claims 17 and 19 above.

38. As to claim 36, this claim is rejected for the same reason as claim 31 above.

39. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 6,412,007 to Bui et al and 6,442,608 to Knight et al. teach active session limit applied to user groups.

Response to Arguments

40. Applicant's arguments filed 11/13/06 have been fully considered but they are not persuasive.

41. In the remarks, Applicant argued in substance that:

- a. Arguments in regards to DeKoning, and combinations thereof.
- b. Sitaraman is absolutely silent on quiescing a system.

42. Examiner respectfully traversed Applicant's remarks:

43. As to point (a), these arguments are mooted in view of the new ground of rejection.

44. As to point (b), the term "quiescence" was not defined in applicant's specification, additionally, the recitation of "quiescing" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight

where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

45. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

46. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Qing-Yuan Wu whose telephone number is (571) 272-3776. The examiner can normally be reached on 8:30am-6:00pm Monday-Thursday and alternate Friday.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Thomson can be reached on (571) 272-3718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Qing-Yuan Wu

Patent Examiner

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WILLIAM THOMSON
SUPERVISORY PATENT EXAMINER